

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAA'LA EDWARDS, a minor,
MICHELE EDWARDS and
BRENT EDWARDS,

Plaintiffs,

v.

SCHOOL DISTRICT OF BARABOO
EMPLOYERS MUTUAL CASUALTY CO.,
and SANDRA CONLEY,

Defendants.

ORDER

07-cv-706-bbc

After defendants filed a motion to dismiss the complaint for plaintiffs' failure to state a claim upon which relief may be granted, plaintiffs filed an amended complaint, which includes plaintiffs' original claims under the Individuals with Disabilities in Education Act as well as new claims under the Americans with Disabilities Act, the due process clause, the equal protection clause and state law. Defendants have now filed a second motion to dismiss, but it addresses the new claims only. Generally, "when a plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward." Massey v. Helman, 196 F.3d 727, 735 (7th Cir. 1999). Thus, any

motion to dismiss plaintiff's original complaint is now moot, even if some of the claims at issue in the first motion to dismiss have been included in the amended complaint.

It is likely that defendants' second motion to dismiss does not address the IDEA claim because defendants presumed erroneously that their first motion to dismiss remains in play. However, because I cannot decide a moot motion, defendants have three options: (1) file a renewed motion to dismiss that addresses any changes between the original and amended complaints with respect to the IDEA claim; (2) file a renewed motion to dismiss that incorporates the arguments in the briefs from the first motion to dismiss (if defendants believe that all of the arguments in their original motion to dismiss apply equally to the amended complaint); or (3) do nothing (in which case, I will not consider defendants' arguments regarding the IDEA claim).

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants School District of Baraboo, Employers Mutual Casualty Co. and Sandra Conley (dkt. #6) is DENIED as moot. Defendants may have until April 18, 2008, in which to file a renewed motion to dismiss that addresses claims included in both the original and amended complaints. If defendants inform the court that they wish to stand by their briefs filed in support of their first motion

to dismiss, I will not set a briefing schedule and will take the motion under advisement.

Entered this 15th of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge